

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on September 26, 2006, the Examiner made a restriction requirement between two identified inventions: 1) a load bearing apparatus as claimed in claims 1, 3-21 & 26-31, and 2) a method for distributing weight of a load as claimed in claims 32-34. The Examiner rejected claims 1, 3-6, 15, 19, 20 and 21 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 5,749,010 to McCumber (hereinafter "McCumber"), claims 7, 8, 11, and 27 under 35 U.S.C. § 103(a) as being unpatentable over McCumber in view of U.S. Patent No. 6,652,431 to Mattox (hereinafter "Mattox"), claims 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over McCumber in view of U.S. Patent No. 5,746,705 to Sheppard (hereinafter "Sheppard"), claim 11 under 35 U.S.C. § 103(a) as being unpatentable over McCumber in view of U.S. Patent Publication No. 2002/0145027 to Godshaw et al., (hereinafter "Godshaw"), claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over McCumber in view of Mattox as applied to claim 1, and further in view of U.S. Patent No. 966,562 to Knoerzer (hereinafter "Knoerzer"), and claims 13, 14, 16, 17, 18, 26, 28, 29, 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over McCumber in view of Mattox, Knoerzer, and Godshaw.

Restriction Requirement/Election:

In the Office Action, the Examiner provided a restriction requirement. Applicants traverse the Restriction, and in the alternative hereby elect and confirm the election to prosecute

the apparatus species as contained in Group 1 identified by the Examiner, covering claims 1, 3-21, and 26-31.

In the Office Action, the Examiner provided a two-part rationale supporting the restriction requirement: 1) that the inventions in the two Groups identified by the Examiner are differently classified, and 2) that the inventions in the two Groups are related as product and process of use and the process as claimed can be practiced with another materially different product such as a “shoulder and back gun holster.” Applicants respectfully disagree with both parts of the rationale asserted by the Examiner, as follows:

As set forth in the MPEP, to establish a case for restriction, the PTO must at least show that two elements are met: “(A) [t]he inventions must be . . . distinct . . . and (B) [t]here would be a serious burden on the examiner if restriction is not required.” (MPEP § 803) As discussed below, Applicants traverse the Restriction between species on the grounds that one or both of the distinctiveness element and the burden element are not met.

Regarding the distinctiveness element, the Examiner asserted that the claimed process can be practiced with another materially different product such as a shoulder and back gun holster. Applicants respectfully disagree. Independent claim 32 requires “providing a substantially rigid shoulder frame assembly to substantially conform to said user’s shoulders and back, wherein the substantially rigid shoulder frame includes two differently shaped shoulder support members, wherein said shoulder support members further comprise specific contours comprising a dorsal segment and an anterior segment, wherein one of said shoulder support members comprises a lateral extension that extends from said anterior segment.” Applicants are unaware of any shoulder and back gun holster having a rigid shoulder frame assembly, as is

clearly required by the claim. Applicants therefore respectfully submit that the claimed method cannot be used with a materially different product, and that the restriction requirement is improper for this reason alone.

Regarding the burden element, the Examiner has failed to establish the burden element for the identified species. As set forth in the MPEP, “[f]or purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search.” (MPEP §§ 803 and 808.02.) With regard to the identified species the Examiner has not alleged the need for a separate search. Instead, the Examiner has alleged that the claims are classified in different classes. However, the Examiner has identified claims 32-34 as belonging to “class 206, subclass unknown.” Applicants disagree with the classification stated by the Examiner. Class 206 is for “Special Receptacle or Package.” Applicants assert that a method for distributing a weight of a load over a user to facilitate manual transport of said load including steps of providing a substantially rigid shoulder frame assembly, attaching a load to the frame assembly, and positioning the frame assembly over the shoulders and back of a user cannot be classified in any class of “Special Receptacle or Package.” This is shown by the fact that the Examiner was unable to find a corresponding subclass. Therefore, as the Examiner has failed to show that a “serious” burden on the Examiner resulting in a different search. For this reason alone, the Restriction should be withdrawn.

Applicants further submit that each of the above-stated reasons for withdrawal of the restriction requirement is further supported by the amendments to claim 32 made herein. Applicants therefore respectfully request withdrawal of the requirement.

Rejections under 35 U.S.C. § 102(b):

In the Office Action, the Examiner rejected claims 1, 3-6, 15, 19, 20 and 21 under 35 U.S.C. § 102(b) as being anticipated by McCumber. M.P.E.P. 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. “To anticipate a claim, the reference must teach every element of the claim.” M.P.E.P. 2131 states further,

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . . “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants respectfully submit that the references cited by the Examiner fails to teach every element of the claim set as provided herein for the following reasons.

Claim 1 requires “a central rib to distribute a weight corresponding to said load over the back of a user.” McCumber teaches a camera stabilizing frame with a U-shaped member that does not distribute weight over a user’s back, but is specifically disclosed as putting weight on a user’s neck and chest. (See Abstract lines 7-9, Col 1 lines 20-24, Col 1 lines 40-41, Col 2 lines 18-20, Col 2 lines 38-43, and Col 4 lines 42-49.) Specifically, McCumber teaches:

The first U-shaped portion is curved backward away from the user's head so as to follow the curve from the back of a user's neck 26 down to the chest 28 as shown in FIGS. 2 and 3. The generally straight leg portions rest against the chest 28 to support the entire unit so that little weight or pressure is put on the neck 26.

(Col 2 lines 38-43, emphasis added) Thus, for this reason alone, McCumber fails to teach every element of claim 1.

In addition, claim 1 has been amended to require: “attachment means for attaching said load to said apparatus, said attachment means being coupled to at least one of: said central rib;

said dorsal segment of said stabilizing arm; and said dorsal segment of said opposing arm.” This additional limitation is not taught by McCumber. McCumber does not teach an attachment means dorsally located on the apparatus. Instead, McCumber is only interested in stabilizing a camera during use in front of the camera operator. (Col 1 lines 15-22) Therefore, it is not surprising that McCumber does not teach a dorsal attachment means. For this additional reason, McCumber fails to teach every element of claim 1.

Applicants therefore submit that McCumber fails to anticipate claim 1. Claims 3-6 and 15 depend from claim 1 and are at least allowable for the same reasons. Claim 19 includes similar limitations and is similarly allowable. Claims 20-21 depend from claim 19 and are also allowable for at least the same reasons. Applicants therefore respectfully request removal of all rejections under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. § 103(a):

In the Office Action, the Examiner rejected claims 7-14, 16-18 and 26-31 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of references with the McCumber reference. The standard for a Section 103 rejection is set forth in M.P.E.P 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on

applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

(Emphasis added). Applicants respectfully submit that the references cited by the Examiner, either alone or in combination, do not teach or suggest all the limitations claimed in the claim set provided herein. Applicants also respectfully submit that there is no suggestion or motivation to combine the references in the manner suggested by the Examiner, and that one of skill in the art would not reasonably expect success in combining the references in the manner provided.

As discussed above, McCumber fails to teach or suggest a load bearing apparatus distributing weight across a user's shoulders or back, instead teaching a camera support that distributes weight to a user's neck and chest. McCumber also fails to teach or suggest a dorsally-located load attachment means, as the support of McCumber is only directed at supporting a camera in front of a user. (Col 1 lines 15-22) The only attachment point disclosed by McCumber other than the camera attachment point is the "eyelet means 74" which is only disclosed as being used to secure a belt around the user and the support for added stability, and is therefore not a load-bearing attachment means. (Col 3 lines 51-55)

Claim 1 has been amended to include the limitations of claim 11, with additional specificity requiring that the attachment means be located on a dorsal portion of the apparatus, rather than any point on the stabilizing arm or opposing arm. These added limitations are also not disclosed by Mattox or Godshaw. Specifically, in the Office Action, the Examiner identified element 24 in Mattox as teaching Applicants' claimed attachment means. Element 24 of Mattox is a "T-member" that is placed on Mattox' frame for the sole reason to support the optional shoulder pads 34 of Mattox. Therefore, the T-member of Mattox is not an attachment means for

attaching a load to Mattox apparatus and therefore Mattox fails to disclose this element of the claim.

As to Godshaw, in the Office Action, the Examiner did not specifically identify any structure as performing the Applicant's claimed attachment means function. Instead, the Examiner only identified structure 98 as being Applicant's claimed central rib. While Applicants are unsure as to what structure of Godshaw the Examiner intends to rely upon as disclosing the claimed attachment means, Applicants respectfully submit that even if Godshaw teaches an attachment means, there is no motivation to combine Godshaw and McCumber in the manner suggested by the Examiner. Indeed, the M.P.E.P. states that teaching or suggestion to make the combination of references must come from the references themselves, and must be "clear and particular." M.P.E.P. 2142. In the Office Action, the Examiner provided this supposed motivation: "in order to enhance multi-functional capabilities." Neither McCumber nor Godshaw teaches that any combination of the two references will "enhance multi-functional capabilities." Indeed, the Examiner made this assertion without any specific reference to a passage from either McCumber or Godshaw, and neither reference uses such terminology.

One of skill in the art would not see any reason to combine Godshaw with McCumber, and would not do so to enhance multi-functional capabilities, as proposed by the Examiner. The camera support of McCumber is designed to provide maximal rigid stability to a camera, while the tool belt of Godshaw is designed to provide maximum storage space around the waist of a person such as a carpenter. The needs of those whom each invention is addressed are different, and neither addresses the needs addressed by Applicants' invention. Thus one of skill in the art concerned with providing load support across a user's back and shoulders would not be

motivated to combine McCumber that puts a load across a user's neck and chest with Godshaw that puts a load around a user's waist.

In essence, Applicants urge that the combination of the listed references is not a product of a suggestion contained within them, but is a product of inappropriate hindsight analysis.

"Hindsight reconstruction" cannot be used "to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." Ecolochem, Inc. v. S. California Edison Co., 227 F.3d 1361, 1371 (Fed. Cir. 2000) (quoting In re Fine, 837 F.2d 1071 (Fed. Cir. 1988)). Rather, "the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references." *Id.* "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability-the essence of hindsight." *Id.* (quoting In re Dembiczak, 175 F.3d 994 (Fed. Cir. 1999)).

In light of the absence of any suggestion or motivation to combine the McCumber and Godshaw references, the mere fact that such references conceivably could be combined in the manner suggested by the Examiner does not render the combination or the presently-claimed invention obvious.

For at least these reasons, Applicants respectfully submit that claim 1 is not made obvious by the cited combination of references. All other claims either depend from claim 1 or contain similar limitations. Applicants therefore respectfully request removal of all rejections under 35 U.S.C. § 103.

Patentability of Unconsidered Claims 32-34:

Claim 32 contains similar limitations to those contained in claim 1 and is at least allowable for the same reasons. Claims 33-34 depend from claim 32 and are similarly allowable.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,



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